

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: John Zimmerman

Serial No.: 10/084,715

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For: Method and apparatus for an adaptive  
audio-video program recommendation system

Examiner: Clyde H. Jones III

Art Unit: 2623

Confirmation No.: 6622

Attorney Docket No.: US020013

January 26, 2007

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION**

Sir:

This is in response to the Office Action dated November 28, 2006, and made Final. In such Office Action, it was stated that the declaration under 37 C.F.R. §1.131 filed on September 11, 2006, was ineffective to overcome the Bates et al. reference (U.S. Patent Publication 2002/0145321). Furthermore, the prior art rejections to Bates alone and in combination with Percy et al. (U.S. Patent 4,646,145) or Reynolds et al. (EP 0774866) were maintained and the Office Action was made Final.

Applicant again respectfully traverses all rejections based on Bates et al. '321 and requests that the finality of the Office Action dated November 28, 2006, be **withdrawn** in view of the new Declaration under 37 C.F.R. §1.131 filed herewith ("the 131 Declaration"). The Bates et al. '321 reference has an effective date of January 31, 2002 ("the Effective Date"). The 131 Declaration provides evidence of conception of the present invention prior to the Effective Date, and the 131 Declaration in combination with an additional Declaration by Aaron Waxler (prosecuting attorney that filed the original application on February 25, 2002) provided herewith provide evidence of diligence from a date prior to the Effective Date to a constructive reduction